

United States Department of Agriculture



VIA ELECTRONIC MAIL

**Subject: 2015 Agricultural Conservation Easement Program (ACEP - ALE)
Announcement of Application Cut-off Date for Colorado**

To Our Land Conservation Partners:

The next application cut-off date for ACEP will be:

Friday, May 15, 2015 (4:00 PM)

Send or deliver proposals to:

David Colburn, Easements Coordinator
USDA Natural Resources Conservation Service
Denver Federal Center
Building 56, Room 2604
P.O. Box 25426
Denver, CO 80225

Postmarks WILL NOT be honored as meeting the application cut-off date.

Please submit your proposal **electronically to David Colburn: David.Colburn@co.usda.gov**
If you are unable to email your proposal then you can send it to David at the address above,
along with an electronic copy of the proposal.

The Agricultural Conservation Easement Program (ACEP) is a voluntary program to help farmers and ranchers preserve their agricultural land. Under the agricultural land easement component, NRCS provides matching funds to State, Tribal, and local governments, and nongovernmental organizations with farm and ranch land protection programs to purchase permanent agricultural land easements.

For general information about the ACEP, check out our national website at:
<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/acep/>

The Colorado NRCS website at: <http://www.nrcs.usda.gov/wps/portal/nrcs/main/co/programs/>
will have links to the forms and other information needed for application packages.

Helping People Help the Land

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Entity eligibility: Eligible entity means an Indian Tribe, State government, local government, or a nongovernmental organization which has a farmland or grassland protection program that purchases agricultural land easements for the purpose of protecting agriculture use and related conservation values, including grazing uses and related conservation values, by limiting conversion to nonagricultural uses of the land. (1) To be eligible to receive ACEP–ALE funding, an Indian Tribe, State, unit of local government, or a nongovernmental organization must meet the definition of eligible entity as listed in § 1468.3. In addition, eligible entities interested in receiving ACEP–ALE funds must provide NRCS sufficient evidence of: (i) A commitment to long-term conservation of agricultural lands, (ii) A capability to acquire, manage, and enforce easements, (iii) Sufficient number of staff dedicated to monitoring and easement stewardship, and (iv) The availability of funds at the time of application sufficient to meet the eligible entity's contribution requirements for each parcel proposed for funding. (2) All entities identified on the application or agreement must: (i) Ensure that their records and the records of all landowners with parcels selected for funding have been established in the USDA customer records system and are responsible for ensuring that USDA has all the documentation needed to establish these records, and (ii) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170, and maintain such registration for the duration of the cooperative agreement.

Landowner eligibility: Under ACEP–ALE, the parcel landowners must: (1) Be in compliance with the highly erodible land and wetland conservation provisions; persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions; (2) Agree to provide access to the property and such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program implementation purposes; and (3) Have their records established in the USDA customer records system.

NRCS will verify landowner compliance with the HEL/WC issues using a secure web-based application, the AD-1026 must be submitted by the landowner(s) directly to FSA. It is important that landowners submit these documents early to allow sufficient time for FSA staff to process the information and get compliance settings set correctly in the system. We cannot award funds to projects without assurance of landowner eligibility. Submit a copy of the AD-1026 with your application package.

Landowner(s) must certify to having an average annual adjusted gross income (AGI) equal to or less than \$900,000.00 for the previous three tax years for both on-farm and off-farm income. Landowners should address this immediately to avoid delays in processing this application. If the landowner is an entity, additional forms may be needed by FSA to verify AGI status at the individual level—e.g., “CCC-901” or “CCC-902E.” Check with FSA. NRCS will verify that all landowners (and entity members as appropriate) have completed and filed the CCC-941 “AGI Certification and Consent to Disclosure of Tax Information” and have a status of “Filed CCC-941” in the FSA Subsidiary System, unless the landowner is an AGI-exempt business type. Submit a copy of all AGI forms with your application package.

Land eligibility: (1) An onsite review by NRCS is required prior to the NRCS making a land eligibility determination. To be eligible for ACEP-ALE, land must meet each of the following criteria: (1) Private or Tribal land that is agricultural land, including land on a farm or ranch; (2) Subject to a written pending offer for purchase of an agricultural land easement from an eligible entity; (3) Land that meets at least one of the following criteria: (i) Has prime, unique, or

other productive soil; (ii) Contains historical or archaeological resources; (iii) The enrollment of which would protect grazing uses and related conservation values by restoring and conserving land; (iv) The protection of which will further a State or local policy consistent with the purposes of ACEP; (4) Land that is at least one of the following: (i) Cropland; (ii) Rangeland; (iii) Grassland or land that contains forbs, or shrubland for which grazing is the predominant use; (iv) Located in an area that has been historically dominated by grass land, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value; (v) Pastureland; (vi) nonindustrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development; (5) Land that is in an area that has access to agricultural markets for its products, infrastructure appropriate for supporting agricultural production, and other support services; (6) Land that faces development pressure from nonagricultural use.

Ineligible land: The following land is not eligible for enrollment in ACEP-ALE: (1) Lands owned by an agency of the United States, other than land held in trust for Indian Tribes. (2) Lands owned in fee title by a State, including an agency or a subdivision of a State, or unit of local government. (3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values. (4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection as would be provided by enrollment in the ACEP-ALE. (5) Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous substances, proposed or existing rights of way, infrastructure development, or adjacent land uses. (6) Land that NRCS determines to have unacceptable exceptions to clear title or insufficient legal access. (7) Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner unless NRCS determines that the third party rights will not harm or interfere with achieving the ACEP-ALE purposes.

Grassland of special environmental significance (GSS): NRCS has defined grassland of special environmental significance in the interim rule as “grasslands that contain little or no noxious or invasive species; are subject to threat of conversion to nongrassland uses or are subject to fragmentation; and the land is rangeland, pastureland, or shrubland on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or is improved, naturalized pastureland and rangeland. In addition, these must be lands that provide, or could provide, habitat for threatened, endangered species or at-risk species; protect sensitive or declining native prairie or grassland types; or provide protection of highly sensitive natural resources.”

GSS Land Eligibility: To be eligible for the grasslands eligibility category for ACEP-ALE, the land must meet the definition above along with the following: Is the land currently enrolled in CRP in a contract that is set to expire within one year and is grassland that would benefit from protection under a long-term easements.

NRCS Waiver to Federal Share: NRCS may authorize a waiver to increase the Federal share of the cost an agricultural land easement to an amount not to exceed 75 percent of the fair market value of the agricultural land easement if: (i) NRCS determines the lands to be enrolled are grasslands of special environmental significance as defined in this part, (ii) An eligible entity will share in the cost of purchasing an agricultural land easement in an amount that is no less than 33.33 percent of the Federal share. The eligible entity share may include a qualified landowner contribution if the eligible entity contributes its own cash resources in an amount that

is at least 16.67 percent of the Federal share, and (iii) The eligible entity agrees to incorporate and enforce the additional necessary deed restrictions to manage and enforce the easement to ensure the grasslands of special environmental significance attributes are protected. (4) NRCS may waive a portion of the applicable eligible entity cash contribution requirement for enrollments that NRCS determines are of projects of special significance, including ALE enrollments that have received a waiver as grasslands of special environmental significance waiver. The waiver of the entity cash contribution does not result in an increase in the applicable Federal share and may only be authorized if NRCS determines the parcel is a project of special significance and NRCS determines that—(i) The transaction is subject to an increase in the private landowner donation that is equal to the amount of the waiver, (ii) The increase in the landowner donation is voluntary, (iii) The property is in active agricultural production, (iv) The agricultural land easement plan will address the protection of the attributes resulting in the parcel being a project of special significance, and (v) The eligible entity contributes its own cash resources in an amount that is: (A) For projects of special significance that are not grasslands of special environmental significance, at least 25 percent of the amount of the Federal share, or at least 10 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land; and (B) For enrollment on lands that has received a grasslands of special environmental significance waiver, at least 8.33 percent of the amount of the Federal share, or at least 3.33 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land. (vi) The parcel must meet definition of project of special significance and meet one or more of the following national criteria. The parcel is: (A) Listed on the National Register of Historic Places or is a traditional cultural property; (B) Located within a micropolitan statistical area and 50 percent of the adjacent land is agricultural land; (C) Located within a metropolitan statistical area; (D) An education or demonstration farm or ranch focused on agricultural production and natural resource conservation; (E) A farm or ranch operated for the purpose of increasing participation in agriculture and natural resource conservation by underserved communities, veterans, beginning farmers or ranchers, or disabled farmers or ranchers; (F) Officially designated as having been in the same family ownership for over 100 years; or (G) Meets the definition of grasslands of special environmental significance.

Award Decisions: Tentative award decisions will be announced on or about June 12, 2015. Awards will be based on the ranking of applications by score for applications and those that meet the purpose of the ACEP program: protecting the agricultural use, viability, and related conservation values of eligible land by limiting nonagricultural uses of that land; and protects grazing uses and related conservation values by restoring and conserving eligible land.

Submit a sample of the easement deed you propose to use with your application(s). Please, incorporate language from the attached “Minimum Terms For Agricultural Land Easements,” which transmits language relating to liability, the environmental warranty, a reserved right of enforcement for the United States of America, and a conservation plan, among other things.

Substitute Property: All substitute properties must be listed on the application. With NRCS approval, an eligible entity may substitute pending easement offers within their cooperative agreement. The substituted landowner and easement offer must meet eligibility criteria as outlined above at the time of application. NRCS may require re-ranking of substituted acres within an easement offer and substituted easement offers within a cooperative agreement.

Subdivision: (1) In general, the agricultural land easement deed should prohibit future subdivision of the protected property. If the landowner intends to subdivide a parcel in the future, individual applications should be submitted for the individual intended subdivided parcels and ranking conducted on the individual applications. If the smaller parcels rank high enough to be selected for funding, separate agricultural land easements may be purchased on the individual parcels. (2) The eligible entity must address the potential for future subdivision in the agricultural land easement deed. The eligible entity may include provisions to prohibit subdivision of the easement area entirely, except where State or local regulations explicitly require subdivision to construct residences for employees working on the agricultural land easement area. (3) If the eligible entity instead of prohibiting future subdivision of the protected property wants to provide for the future subdivision of the protected property, then the agricultural land easement deed must identify the maximum number of future parcels. Additionally, if the boundaries of the proposed subdivisions— (i) Are identified and approved by the State Conservationist prior to closing, both the approved number and boundaries must be identified in the agricultural land easement deed. No further NRCS review is required at the time of future conveyance of the parcels as identified in the deed. (ii) Are not identified prior to closing, the eligible entity must submit a request to the State Conservationist for approval prior to authorizing a subdivision. The entity must certify that the requested subdivision is required to keep all farm or ranch parcels in production and viable for agriculture use and that separate conveyance of the farm or ranch parcels subject to the agricultural land easement will move the land from one agricultural operation to another. The State Conservationist must determine that—
☐ Parcels resulting from the subdivision of the protected property will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 et seq. as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels. ☐ The resulting parcels will not be below the median size of farms in the county or parish as determined by the U.S. Department of Agriculture's most recent National Agricultural Statistical Survey (NASS).

The "2015 Colorado ACEP Application Guide" contains the elements that must be addressed in your proposal. Please, develop your proposal according to the format in the guide.

We are requiring the use of the "Standard Forms" used in applications for federal financial assistance: SF-424, SF-424A, and SF-424B. Entities receiving federal financial assistance are required to obtain a "DUNS number" and register in the System for Award Management (SAM).

Projects without the required matching funds are ineligible to receive an ACEP award.

Contact David Colburn if you have any questions: (720)544-2820 / david.colburn@co.usda.gov
We look forward to working with you.

Sincerely,



DAWN JACKSON

Assistant State Conservationist - Programs

Enclosures